Supreme Court, U.S.
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No._____

In The

SUPREME COURT OF THE UNITED STATES

In Re A. LIPKO JR.

V.

M. CHRISTIE

Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Second Circuit

PETITION FOR A WRIT OF CERTIORARI

A. LIPKO JR.
P. O. BOX 536
NEW HAVEN, CT 06503
(NO PHONE)

QUESTIONS PRESENTED

1. Does a 42 U.S.C. Section 1983, Malicious Prosecution Action, permit damages for confinement imposed, pursuant to legal process, obtaining a state judgment by perjury, followed by fraud, extortion, harassment, obstruction of justice, conspiracies and foreclosure of petitioner's home, and do these actions violate the 4th (Seizure, person), 5th and 14th Amendments' Constitution Provisions (Seizure, property)?

LIST OF PARTIES

PETITIONER

A. LIPKO JR.
P.O. BOX 536
NEW HAVEN, CT 06503

RESPONDENTS:

M. CHRISTIE
44 BEAN ROAD
PLAINFIELD, VT

E. LIPKO
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ATTORNEYS OF RESPONDENTS:

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CHRISTINE GONILLO
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MILFORD, CT 06460

MAGER & MAGER
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TABLE OF CONTENTS

QUESTIONS PRESENTED..... i

PARTIES..... ii

TABLE OF CONTENTS..... iii

TABLE OF AUTHORITIES..... iv

CONTITUTION AND STATUTORY
PROVISIONS INVOLVED.....viii

ORDERS..... x

JURISDICTION..... 1

STATEMENT OF THE CASE..... 2

ARGUMENT – STANDARD OF REVIEW..... 7

REASONS FOR GRANTING THE WRIT..... 7

CONCLUSION..... 27

TABLE OF AUTHORITIES

CASES PAGE

Adam v. Silicon Valley Boneshares, 884 F. Supp. 1398...15

Adickes v. S.H. Kress & Co., 398 U.S.144..... .. 21

Albright v. Oliver, 510 U.S. 266..... 17

Allen v. Westpt-Pep., 11 F.Supp. 2d 277(S.D.N.Y.1997). 13

Averbach v. Rival Mfg. Co. 809 F.2d 1016 3rd Cir..... 29

Beauregard v. Wingard, 230 F. Supp. 167..... 27

Bentel v. U.S., 13 F. 2d 327.....23, 25

Brown v. Cahill, 157 So 2d 871 Fla. Dist. Ct. App.1983..15

Carroll v. Jaques, 926 F. Supp 128 2 (E.D. TEX. 1996)... 6

Cent.Bank Denver v.1st Intst. Bank Denver, 511U.S.164.15

Cleveland Dem. v. Azcon Scrap Corp. Gold Fields Amer. Ind. Inc., (1987, CA4 VA) 827F2d984, 8FR Serv. 3d 453..9

Colon v. City of N.Y., 60 N.Y. 2d 78, 468 N.Y.S. 2d 453, 455 N.E. 2d 1248.....19

Cooter & Gell v. Hartmanx Corp.,496 U.S. 384..... 6

Cox v. Stanton, 529 F.2d 47..... 14

Desmon v. Faucett, 226 Mass, 100, 115N.E.280..... 19

TABLE OF AUTHORITIES

CASES PAGE

Employer Inc Wausau v. Musick, Peele & Garrett, 871 F.Supp. 381 (S.D.Co.)..... 15

Exam. Bd.Eng. & Surv. v. Flores de Oteo, 426 U.S. 572. 20

Fuentes v. Shevin, 407 U.S. 67.....3, 24

Gabriel Cap.v. Nat. W.Fin.Inc.,94 F. Supp. 2d 491 (S.D.N.Y. 2000)..... 14, 23

Gallo v. City of Philadelphia, 161 F.3d 217 (1998)..... 16

Gerstein v. Pugh, 420 U.S. @ 114..... 17

Gleason v. Jandrucko 860 F. 20 556(2nd Cir. 1988)..... 29

Grave v. Center for Auto Safety, 72 F.3d 1236 24 Media L. Rep.(BNA) 1299(6th Cir. 1966)..... 6

Gresham Park Com. Org. v. Howell, 652 F.2d 1227...20, 21

Haberman v. Greenspan, 82Misc 2d 263, 368 N.Y.S. 2d 717.....13,15

Hazle-Atlas Glass Co. v. Hfd.Emp.Co., 322U.S.238... 9,14

Heck v. Humphreys, 512 U.S. 477..... 16

Hill v. California, 401 U.S. 797..... 17

H.K Porter v. Goodyear T&R (CA6 Ohio)536F2d1115.. 10

TABLE OF AUTHORITIES

CASES PAGE

In re Estate of Long, 311 Ill. App. 3d 959, 244 Ill. Dec. 591, 726 N.E. 2d 187(2000)..... 11

In re Software Toolworks, Inc. Sec. Lit. 38F. 3d 1078. 14,15

In re U.S.A. Classic Securities Litigation, 93 Civ. 6667 (JSM), 1995 WL 363841 @ *5 (S.D.N.Y. 6/19/95).....15

Kezer v. M. Stimson Assoc., 1999ME184,742A.2d898...13

Kuehoefer v. Welch, 893 S.W.2d 68.....11

Londoner v. City Denver, 210 U.S. 373..... 23

Lynch v. Hshld. Finance 405 U.S. 538..... 20

Magnaleasing, Inc. v. Staten Is. Mall,428F.Supp.1039... 15

Marshall v. Holmes, 141 U.S. 589..... 28, 29

Marshall v. Sullivan, 105 F.3d(1996)..... 19

Mullaine v. Central Hanover Trust, 339 U.S. 306..... 22

Murphy v. Lynn, 118 F.3d 939 (2d. Cir.L)..... 16, 17

Peter v. Amoco Oil Co., 57 F. Supp. 2d 1268 (1999)..... 12

Pierce v. Multnomah Cty. Oregon, 6 F. 3d 1032..... 17

Pospisil v. Pospisil,59Conn App.446,757A.2d655(2000). 11

TABLE OF AUTHORITIES

CASES PAGE

Rooker Feldman Doctrine..... 20

Schroeder v. N.Y. 371, U.S. 208..... 22

Singer v. Fulton Cty. Sheriff, 63F.3d1110, (2d Cir. 1995). 18

Soc. Intnat'l holding in Nat'l Hockey League v. Met. Hockey, Inc. 427 U.S. 639..... 22

Soc. Int. Pour Part. Ind. Com.S.A. v. Roges,357U.S.197.. 21

S.E.C. v. Frank, 388 F. 2d 486. (1968).....25, 26

Smith v. Underwood, 127 N.C. App. 1 487 S.E. 2d 807.. 11

Spies v. U.S., 317 U.S. 492..... 25

Stine v. Sanders, 987 S.W.2d. 289 (1999)..... 15

Stone v. U.S., 113 F.2d 70..... 26

Stovall v. Denno,38 8U.S.293, 87S.Ct.18L. Ed.2d.1999. 6

Thaiheim, 853 F.2d 383 (5th Cir. 1988..... 6

U.S. v. Price, 383 U.S. @ 794..... 21

U.S. v. Throckmorton, 98 U.S. 8 Otto) 61..... 29

Whittenberger Com. v. Credit Grp., 37 Mass. App C 303, 639 N.E. 2d737..... 25

TABLE OF AUTHORITIES

CASES PAGE

Wilkin v. NBC Inc., 71 Cal.App.1066(1999) 84 Cal... 12

Wisconsin v. Constantineau, 400 U.S. 433..... 28

W.V. Oil & Gas Co. v. G.E. Breece Lumber Co.
(CA5 La) 213 F2d707)..... 14

OTHER AUTHORITIES

Driver's Privacy Protection Act 1994.....6, 29

Moore Federal Practice 60.36L(2d ed. 1955)..... 14

Moore & Roger Federal Relief From Civil Judgments,
55 Yale L.J. 623(11946)..... 14

The Public Integrity Bureau..... 7

Wright & A. Miller, Fed. Prac. & Proc.,Sec. 2868..... 29

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

C.G.S.A. Sec. 52-325..... 29
Sec. 52-515, Replevin Statutes..... 24

Fed. Rules Civ. Proc. Rule 11..... 8, 30
Rule 28(J)..... 6
Rule 37(g)..... 8, 22
Rule 46(b)..... 8
Rule 60(b).....14,29

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

12 A Am. Jur., Elements of Fraud..... 8
15 Am. Jur 2d Civil Rights, Sec. 128..... 14
37 Am. Jur. 2d Sec. 300, 301 15,24

56 ALR Fed 895..... 27

United States Constitution, Amendment 4.....17-21
Amendment 5..... 20
Amendment 14.....20,21,26

28 U.S.C.A., Secs. 1254, 1343(3)(4), 1443(1)(2)..... 1
Sec. 1343..... 4
Sec. 1343(a)(3)..... 21
Secs. 1651(a), 2241, 2254(a)..... 1
Sec. 1927..... 5,8

42 U.S.C.A. Secs. 1981, 1985..... 4
Sec. 1983, Civil Rights Act.....1,4,17,21,26

ORDERS

1. The Probate Judge's (B. Joy) written Order for the Distribution of the Estate on 8/14/95.

2. The State Superior Court, Judge Curran, issued a permanent injunction NOT to appeal his Order to a higher Court on 8/15/97.

3. The State Appellate Court denied the permanent injunction on 12/10/917.

4. Appellate Court Order of Monies Sanctions in the amount of $1,485.00, on 3/20/02, against Petitioner.

I. JURISDICTION

1. Pursuant to Sec. 2108, where the power of any court of appeals to review a case depends upon the amount of value in controversy. Petitioner hereby ascertains that the fraudulent state court judgment is at least $206,485.00.

2. The statutory authority for issuance of extraordinary writ of the court's Appellate Jurisdiction is 28 U.S.C. Section 1651(a), 2241 or 2254(a). A writ will be granted with respect to any claim that was adjudicated in a state court proceeding when the adjudication of the claim (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state Court proceeding; or (3) there was an absence of available State corrective process; or (4) circumstances exist that render such process ineffective to protect the rights of the applicant.

3. Petitioner invokes the jurisdiction of this court under 42 U.S.C. Sec.1983, 1985, 28 U.S.C. Sec. 1343(3)(4), and 1443(1)(2), which applies equally to personal liberties or property rights; and that jurisdiction is not barred by some other statute. The Act of Congress is the substantive basis. Statement of Jurisdiction: Following a petition for rehearing, and timely motion to stay the mandate, the 2nd Circuit issued its Summary Judgment in lieu of a formal mandate on April 6, 2004; and this petition for a writ of certiorari has been filed within 90 days of that date. This Court has jurisdiction to review the 2nd Circuit's decision under 28 U.S.C. Sec.1254. The District and 2nd Circuit Orders are found in the Appendix.

II. STATEMENT OF THE CASE

1. The Nature of the Case is an Estate. The Testator died on May 02, 1993. When the Petitioner produced unaccounted for bank accounts in the amount of $95,014.73, he was refused any opportunity in State Courts to have these bank accounts verified. Malfeasance in the Estate involved the Succession Tax, which was filed 7 months late. Total taxes, Interest, including Penalty due: $22,208.11. First Attorney, Henry Maretz was removed by the Probate Judge (B. Joy). The Probate Judge himself resigned when the permanent injunction was issued 8/15/97. He had one year left to serve.

2. The Probate Judge (B. Joy) Ordered Attorney Gonillo and the Estate Representative (Christie) to distribute the Estate on 8/14/95, to the Beneficiaries; and they refused a written Certified Order. Petitioner avers that, instead of distribution of the Estate, Respondents refused to distribute his portion, $24,014.34; and sued him. On 2/29/96, M. Christie had Sheriff W. Stuart serve on A. Lipko Jr./Petitioner, an application for an injunction and summons. The purpose of the injunction was to prevent Petitioner from appealing to a higher court to expose the material fact that the Probate Judge closed the Estate on 8/14/95 and Ordered the distribution. Also, to have Petitioner pay for all attorney fees and other estate costs. Respondents seized Petitioner, and then forced him to plead in State Court. The temporary injunction was denied on 4/8/96. All other Petitioner's motions were denied, and Petitioner was forced to go to Trial, and was prosecuted, without probable cause, that they "could not close the Estate because Defendant keeps appealing". Respondents kept silent on the material fact that the Probate Judge closed the Estate on 8/14/95.

3. The case was heard by the Court, and on

8/15/97, Respondents got a Fraudulent State Court Judgment, part of which states "a claim for $43,638.55 in damages against Defendant, and Plaintiff has established a claim for vexatious litigation. However, the Court reserves decision of damages until a hearing in damages is held ... The Court permanently enjoins the Defendant from filing any further motions and/or appeals to further delay the closing of the Estate". Petitioner appealed the Superior Court's judgment to the Appellate Court, which denied the permanent injunction, 12/10/97.

4. Petitioner removed the Case to the District Court on 8/28/98, by filing a Complaint for Abuse of Process. The District Court Dismissed on 8/18/99, and Appeal was taken to the 2nd Circuit, which affirmed the dismissal of the District Court on 4/6/00, and an Appeal was filed on 5/26/00 in the Supreme Court of the United States. This Court had jurisdiction from 4/6/00 to 1/22/01.

5. Respondents/Gonillo were Ordered by the Supreme Court to file a Brief in Opposition on 11/29/00. Instead of filing a Brief, on 12/7/00, they filed an affidavit of closing the Estate with the Probate Court.

6. Sometime in May 2000, there was a hearing in damages in the State Court, Milford. Petitioner avers that he was not under the subject matter or personal jurisdiction of State Courts, because he was under the jurisdiction of the Supreme Court; and he was not at the hearing in damages.

7. The Fraudulent Judgment Liens, which covered the full State Court Claim of 8/15/97, were entered on First Property on 2/6/01. On 8/28/01, additional Fraudulent Judgment Liens were placed on Second Property. E. Lipko was listed as having claim to both properties.

8. The Judgment Liens were uncovered for the first

time by the Petitioner when he went to Town Hall on 7/20/01 to pay taxes. Motion to Vacate the Fraudulent State Court Judgment was filed on 8/7/01. Lipko Jr. received a new revised State Complaint and Summons on 9/4/01. E. Lipko was listed as one of the Plaintiffs. Superior Court was sent Notice of Removal to the District Court on 9/6/01.

9. District Judge Underhill Remanded to State Court on 9/26/01 sua sponte. Motion to Vacate Fraudulent State Court Judgment dismissed by Superior Court on 9/10/01; and appealed to Appellate Court on 10/1/01. Appellate Court Ordered Petitioner to file Brief on 12/7/01. Petitioner avers that his Brief was filed on 12/3/01, and that he filed all the other documents timely.

10. Petitioner avers that Gonillo, instead of filing a Brief, on 1/2/02, when it was due, filed two motions in Appellate Court: (1) Motion for Permission to File Late Brief; and (2) Motion to Dismiss Appeal, and Monetary Sanctions. The Court Granted the Motion to Dismiss Appeal on 2/21/02, and refused to hear the Appeal; and Ordered a Hearing that relates to Monetary Sanctions against Petitioner to take place on 3/20/02. At that Hearing, Sanctions of $1,485.00 were ordered against Petitioner to pay to Attorney.

11. Petitioner filed Complaint with the District Court on 3/19/02 under Violation of Civil Rights Clause, Title 28:1343; 42 U.S.C.A. 1985, 1983 and 1981. Petitioner avers that he is under the jurisdiction of the Federal Court as of the date of filing; and that he filed an Application for a T.R.O. with Judge Underhill on 4/10/02, to prevent Respondents from taking any action against Petitioner's property during this litigation. District Court dismissed the Application on 5/9/02.

12. Appeal was taken to 2nd Circuit on 5/21/02. The application for an injunction, TRO, and on 6/13/02,

declaratory relief was heard before a three-judge Court, which refused to allow Petitioner oral argument, and denied based on their declining to intervene in a State proceeding to enjoin the pending State civil proceeding. Petitioner filed an Independent Action for Extrinsic Fraud Upon the Court in the District Court. Complaint dismissed on 8/13/02, and appeal was taken.

13. On 08/14/02, Petitioner and family left his property in Milford, at 08:00 A.M. He locked the doors and windows; and locked the 5-foot gate with a chain lock. When he and his family came back to his property at 09:00 P.M., there was a huge chain and padlock on his gate, so that he could not enter his property. All locks were changed. All the desk drawers were missing and papers were all over the floors in the bedroom, kitchen and living room. All records papers were taken. The house was raided, ransacked and completely gutted. The Petitioner's home and property were seized by the Respondents, locked up; including all the family's clothes, food (including ice cream and homemade apple pies in the freezer), 2 cars, tools and equipment in the garage, 2 air conditioners, one newly bought.

14. Appeal 02-328 taken to this Court on 8/17/02. Petitioner filed Brief with 2nd Circuit Appeals Court on 12/17/02, and Reply Brief on 1/27/03. He subsequently filed the following motions: Motion to Add E. Lipko to Name on Caption, Motions for Sanctions under Fed. Rules Civ. Proc. Rule 11, on 2/10/03 and under Rule 37 on 3/17/03: Motion for Disbarment and Suspension of C. Gonillo, 2/15/03; Motion for Disbarment of Joseph J. Mager Jr. 4/12/03; Motion for Suspension or Disbarment of C. Cody, 5/9/03; Motion to have the Respondents, and the law firms, Cody & Gonillo, Mager & Mager, pay damages under 28 U.S.C.A. Sec. 1927, to Petitioner, when Respondents unreasonably and vexatiously multiplied case proceeding.

15. On March 31, 2004, in court room 1505 at 10:00 A.M., after 5 minute oral argument, the panel of three judges, two women and chief panel judge a man, in Petitioner's presence, decided to not adjudicate this appeal, and the oral decision was to pass this decision on to another judge for adjudication, and to have Petitioner give a written response why the sanction of dismissal should not be entered. Response was due on April 5, 2004, and have Petitioner file leave to appeal any further documents. All three judges nodded in agreement. The Panel Judges suggested the Petitioner go to the District Court Bridgeport, CT to get a fax copy of sanction. Petitioner was not able to enter the District Court because you have to show a driver's license. This Court has ruled that an unnecessary identification procedure is a violation of Due Process. (Stovall v. Denno, 38 8 U.S. 293, 87 S. Ct. 18 L. Ed. 2d. 1199). This Court unanimously ruled that the 1994 Driver's Privacy Protection Act prohibiting profiling is constitutional. Petitioner responded to the panel's question in EN BANC Determination Petition, page 13. Careful analysis and discreet findings are required when sanctions are imposed under the Court's inherent power Carroll v. Jaques 926 F. Supp. 1282 (E.D. TEX. 1996). In addition, the Court must make a specific finding of bad faith before imposing sanctions, under its inherent power. Matter of Thaiheim, 853 F. 2d 383 (5th Cir. 1988). A court abuses its discretion when its rulings are based on an erroneous view of the law or on a clearly erroneous assessment of the evidence. Cooter & Gell v. Hartmarx Corp. 496 U.S. 384. Therefore, courts should not dismiss cases under their inherent powers, unless there is a clear record of contumacious conduct, and the record reflects this. Grave v. Center for Auto Safety, 72 F. 3d 1236 24 Media L. Rep. (BNA) 1299 (6th Cir. 1966). The following documents were accepted in the 2nd Circuit on April 4, 2004 at 6:56 P.M.: Petition EN BANC, Staying the Mandate, 6:55 P.M., Citation of Supplemental Authorities. Rule 28(j) Rules of Appellate Procedure: If pertinent and

significant authorities came to a party's attention after oral argument but before decision ... a party may promptly advise the clerk by letter ... referring either to the page of the brief or to a point argued orally ... limited. State Judge, perjury, Exhibit A—Indicted State Judge pleads guilty, resigns. Daniel E. Brennan of Madison, CT. Exhibit B— "State launches corruption hot line. Chief State's Attorney Christopher L. Morano, on November 26, 2003, provided the public with a direct link to his agency's New Public Integrity Bureau. Morano created the new corruption investigation unit in August in the wake of several of the biggest state and municipal government scandals in modern Connecticut history. Those found guilty, Joseph P. Ganim, officer of the court, sentenced to 9 years in prison. Philip Giordano, officer of the court, 37 years in prison. State law enforcement agencies in Connecticut have, until recently, been very reluctant to investigate public corruption cases. The Public Integrity Bureau was created with a very simple mission to investigate any and all allegations of government corruption or malfeasance. The Public Integrity Unit will also investigate allegations against people in the private sector, who may be engaged in illegal activities involving government agencies or individuals."

III. ARGUMENT – STANDARD OF REVIEW REASONS FOR GRANTING THE WRIT

1. This Court has seldom been asked to review probate as an element of due process. The legitimacy of the States' monopoly over techniques of final dispute settlement, comes into question, and raises grave problems for its legitimacy, in situations such as this Petitioner's, when the State's Justice System: 1. Denied Petitioner's review of probate, in Appellate and Supreme Courts; 2. Prosecuted this Petitioner, instead of distributing the Estate; 3. Allowed: liens to be put on his property; 4. And having his home padlocked by State Marshall S. Levine on 8/14/02; 5. And

allowed Respondents to manipulate the Appellate Court by putting monetary sanctions on Petitioner's appeal, and refusing to hear the appeal; 6. and to sue Petitioner under E. Lipko's name, as Plaintiff, and put liens in her name on Petitioner's property. Very cleverly they combined E. Lipko's case to the Christie case, so they could put Eleanor's name on the liens; and 7. Manifested having NO judicial machinery, in Connecticut, for the vacation of judgments.

2. Gonillo is engaged in the practice of law in Connecticut. Christie is a resident of Vermont, and E. Lipko's last known address is New York. Petitioner lived in Connecticut. Further, Petitioner seeks to have C. Gonillo disbarred permanently under Fed. Rules Civ. Proc. Rule 46(b), Sanctions under Rules 11, 37 and 28 U.S.C.A. Sec.1927. Also, Petitioner seeks Christie's and E. Lipko's other attorneys, Mager Jr. and Cody be disbarred permanently under rule 46(b). Finally, Petitioner seeks restitution of his inheritance $24,014.34, as ordered by Probate Judge, and under 28 U.S.C.A. Sec.1927 Petitioner seeks to have the law firms that represent Christie and E. Lipko pay Petitioner for damages; see Conclusion, Disbarment Mager Jr., filed 4/12/03 for relief, and relief in the Brief, and the Conclusion to the Motion For Suspension or Disbarment of C. Cody.

3. Petitioner claims that Gonillo, Cody of the firm of Cody & Gonillo, and Mager Jr. of the firm of Mager & Mager, conspired, with help from the Milford Police on the night of 6/15/02, to participate in a scheme to take the family home in Milford under color of law, change the deed, and sell it to J. Kilew, principle of Allied Properties, LLC, 9 Research Dr., Milford, CT, County of New Haven, CT, telephone: 203-257-8155, and keep the profits.

4. Elements of Fraud, 12A Am. Jur.: Constructive Fraud requires: (1) the existence of some fiduciary,

confidential or special relationship from which a legal duty to disclose. The special relationship in this case is the Estate of A. Lipko Sr. The parties are: Gonillo, Estate Attorney; Christie, Estate Executrix and Beneficiary; E. Lipko and A. Lipko Jr., Beneficiaries. (2) This special relationship surrounded the consummation of the transaction in which the Respondents are alleged to have taken advantage of this position of trust to the Petitioner's detriment, $206,485. in damages, plus loss of $24,014.34 in inheritance.

5. Extrinsic fraud is that fraud present in the act of obtaining a judgment that prevents the opposing party from adequately presenting his case, thereby denying him a fair hearing on the merits of his claim. Common examples of extrinsic fraud and "Fraud on the Court" requires direct attack upon judicial process that "defiles the court itself or prevents it from operating; lying to a judge would be fraud upon the court." Hazle-Atlas Glass Co. v. Hartford Empire Co. 322 U.S. 238. At Trial, on 5/1/97, Gonillo had Christie make false statements and perjury, as follows: Q. But is it your claim that because of Mr. Lipko's litigation you were forced to keep this estate open and forced to file further tax returns? A. Yes. Q. And the estate has remained open during this litigation, Correct? A. Correct. Q. But is it your claim that because of Mr. Lipko's litigation you were forced to keep this estate open and forced to file further tax returns? A. Yes. Q. And Mrs. Christie, you've had to expend – withdrawn. The estate has had to expend sums of money in defending litigation brought by Mr. Lipko. A. Yes. Q. When's the next time you came down? A. 8/14/95, the Probate Court hearing the final accounting. My brother did not appear but the final accounting was done that day. Perjury or other false statements held fraud upon court—trial attorney had conspired with witness to present perjured testimony. Cleveland Demolition Co. v. Azcon Scrap Corp., Div. Of Gold Fields American Industries, Inc.(1987, CA4 VA) 827 F2d 984, 8FR Serv 3d 453.

6. Some examples of the Respondents' fraudulent, false representation of material fact with the Court are as follows: In "Defendants' Memorandum in Support of Motion to Dismiss", p. 1: "The injunction prevents Mr. Lipko from filing any further motions or appeals causing the delay of the closing of the probate estate." P. 5: "The first count sets forth a claim for a permanent injunction seeking to prevent Mr. Lipko from filing any further litigation that would delay the closing of the Estate of Andrew Lipko Sr." p. 6: "The Court further noted that the Estate cannot close until plaintiff ceases his litigation." Also, in "Affidavit In Support Of Defendants' Motion to Dismiss", p. 1: "The Estate has been open since 1993 and remains open due to Mr. Lipko's continuous and repetitive motions and appeals." p. 3: "The estate cannot be closed until Plaintiff ceases his litigation." Both motions can be found in Appellant's Independent Action for Relief From State Court Judgment and State Appellate Court Sanction Order, filed 5/6/02. Since attorneys are officers of court, their dishonest conduct involving perjury would constitute fraud on court. H.K. Porter Co. v. Goodyear Tire & Rubber Co. (CA6 Ohio) 536 F2d 1115. In Gonillo's statement "The Estate cannot be closed until Plaintiff ceases his litigation," she expected him to stop his appeal, and pay all the damages.

7. The elements of "constructive fraud" are (1) The duty owing to the party (the Estate) to be charged to the complaining party (the Petitioner) due to their relationship (the Estate). (2) Violation of that duty by the making of deceptive material misrepresentations, "The Estate cannot be closed until Plaintiff ceases his litigation," of part or existing facts or remaining silent (Gonillo refused to admit that the Probate Judge ordered her to distribute the residue of the Estate on 8/14/95) and remains silent. (3) Injury to the complaining party as a proximate result thereof; the judgment of $206,485.00. (4) The gaining of an advantage

by the party to be charged at the expense of the complaining party (Petitioner). An essential element of the constructive fraud is that Respondents sought to benefit themselves in the transaction (damage judgment award of $206,485.00 against Petitioner and loss of his home). Fraud can be affirmative defense and affirmative cause of action. Kuehuhoefer v. Welch 893 S.W. 2d 689.

8. A fiduciary or confidential relationship may be presumed from the relationship. Once a fiduciary relationship is established, the law presumes that any transaction between the parties in which the dominant party (Respondents) has profited is fraudulent and presumption that may be rebutted only by clear and convincing proof. In Re Estate of Long, 311 Ill. App. 3d 959, 244 Ill. Dec. 591, 726 N.E. 2d. 187 (2000). Once fraud is presumed, the burden shifts to the fiduciary to prove by clear and convincing evidence that no breach of fiduciary duty occurred. Estate of Smith by and through Smith v. Underwood 127 N.C. App. 1, 487 S.E.2d 807(1997).

9. Concealment: An action for fraud and deceit can be maintained not only if affirmative representations are made, but also for negative misrepresentations, such as the failure of a party to a transaction to fully disclose facts of a material nature (the probate judge ordered the distribution on 8/14/95). Accordingly, the concealment of a fact that one has a duty to disclose may serve as a substitute element for an affirmative false representation. Fraud by nondisclosure involves the failure to make a full and fair disclosure of known facts connected with the matter where there is a duty to speak. Pospisil v. Pospisil, 59 CONN. App. 446, 757 A.2d 655 (2000). Writings are admissible.

10. There are four circumstances in which nondisclosure or concealment may constitute actionable fraud: (1) when the Respondents are in a fiduciary

relationship with the Petitioner. (2) When the Respondents had exclusive knowledge of material facts not known to the Petitioner. (Respondents had full knowledge of the Estate). (3) When the Respondents actively conceal a material fact not known to the Petitioner and the Court. (Respondents refused to admit they were ordered to distribute the Estate on 8/14/95). (4) When the Respondents make partial representations but also suppress some material facts. ("... that the Estate remains open since 1993 due to Mr. Lipko's ... motions."). Wilkin v. National Broadcasting Co. Inc. 71 Cal. App. 1066 (1999) 84 Cal. Fraud may consist of both active misrepresentation and passive silence. Vela v. Marywood 17 S.W. 3d 750 (2000).

11. Elements of fraudulent concealment or suppression: (1) Respondents have a duty to disclose. (The Estate is closed and the Probate Judge Ordered distribution on 8/14/95). (2) Respondents suppress material facts. (The Probate Judge ordered distribution on 8/14/95). (3) Respondents suppression of material fact induces Petitioner to act. (Petitioner files lawsuit to vacate the judgment liens on his property). (4) Petitioner suffers actual damage. (Judgment Liens of $206,485.00 and subsequently home sold without his knowledge, finding himself locked out of his home on 8/14/02). Peter v. Amoco Oil Co., 57 F. Supp. 2d 1268.

12. A petitioner attempting to prove fraudulent suppression need not prove intent to deceive, but need only prove a breach of the respondents' duty to disclose the suppressed facts in order to trigger liability. Further, plaintiffs may satisfy the scienter requirement of a fraudulent omission claim by a showing of reckless indifference to error. (Respondents have never in 9 years of this litigation admitted that they were ordered by the Probate Judge on 8/14/95 to distribute the residue. Gonillo covered this fact up by saying "I took the file with me when I left Hurwitz & Sagarin in May of this year. One of the reasons I agreed to take the

case was that the matter had become so convoluted and complex that it would be difficult and costly for a new attorney to handle the matter expeditiously." The matter never became convoluted. Gonillo refused to admit that she was ordered to distribute the residue of the Estate, and refused to let any new attorney see the file of the Probate Judge's Order, and told all the Judges "I cannot close the Estate because Appellant keeps appealing." See Motion for Order, filed 5/17/02 for copy of "Response to Grievance Complaint filed by Andrew Lipko Jr." #98GP16(RNC). Allen v. Westpoint-Pepperall Inc., 11 F. Supp. 2d277 (1997).

13. An active concealment is either a representation but accompanies by such a suppression of facts, as to make it convey a misleading impression, or an attempt by one party to draw the other's attention from a fact or cover it from view. Haberman v. Greenspan, 82 Misc. 2d 263, 368 N.Y. S.2d 717 (Sup 1975). Active concealment of the truth "as an element of fraud where there is no affirmative misrepresentation by respondents" connotes steps taken by respondents to hide the true state of affairs from the petitioner and the judges. Kezer v. Mark Stimson Assoc., 1999 ME. 184, 742 A.2d 898. Concealment amounts to fraud where it is effected by misleading and deceptive talk, acts, or conduct, or is accompanied by misrepresentation; or where, in addition to party's silence, there is any statement, word, or act on the party's part, which tends affirmatively to a suppression of truth, or to a covering up or disguising of the truth, or to a withdrawal or distraction of a party's attention from the real facts. (Gonillo will never admit she was ordered to distribute the residue of the Estate on 8/14/95). "Fraud involves deception practiced in order to induce another to act to his detriment, and which causes that detrimental action." The three elements of fraud are (1) that a false representation of fact was made (the Estate cannot close...); (2) that the party making the representation knew it to be false, (Gonillo's statement that the "Estate cannot

close" when she knew she was ordered to distribute the residue by the probate judge and was at the hearing). (3) that the representation was made to induce the appellant to do what she expected. (Respondents expected the Petitioner to stop the litigation, resulting in his having to pay all the damages). Fraud by nondisclosure, which expands on the three elements, involves the failure to make a full and fair disclosure of known facts connected with a matter. Involvement of attorney in perpetration of Fraud: Several cases have recognized that the fact that an attorney, who is an officer of the court, is involved in the perpetration of a Fraud, supports the conclusion that the fraud is one "upon the court." Hazle-Atlas Co. v. Hfd-Empire 322 U.S. 238.

14. Federal courts have been found to have jurisdiction to hear and decide such independent actions West Virginia Oil & Gas Co. v. George E. Breece Lumber Co. (1954, CA5 La) 213 F2d 707. Judgments obtained by fraud have long been vulnerable to attack in an independent action. Moore, Federal Practice 60.36 (2d ed. 1955). See also Moore & Rogers, Federal Relief from Civil Judgments, 55 Yale L.J. 623, 658 (1946). Federal Rule of Civil Procedure 60(b) not only expressly preserves this independent action states: "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, ... or to set aside a judgment for fraud upon the court."

15. Federal law holds that time of accrual of such an action is when the plaintiff knows or has reason to know of the injury which is the basis of the action. Cox v. Stanton, 529 F.2d 47; 15 AM. Jur 2d Civil Rights Sec. 128.

16. The circuit and district courts are split in their approach to determining when to impose primary liability on professionals. The 9th Circuit has adopted a "significant role" or "substantial involvement" test annunciated in In re

Software Toolworks, Inc. Securities Litigation, 38 F. 3d 1078. Persons liable for fraud must have acted in some manner in furtherance of the fraud or have aided in the commission of the fraud Gabriel Capitol, L.P. v. Nat. West Finance, Inc. 94 F. Supp. 2d 491(S.D.N.Y. 2000). Fraud and Deceit, 37 Am Jur 2d Sec 300.

17. Measure of damages in action for fraud is the pecuniary loss suffered by the defrauded party (Petitioner) as a direct result of the false representations Magnaleasing, Inc. v. Staten Island Mall 428 F. Supp. 1039. A person will be held liable for fraud, if he or she has knowledge thereof and adopts or takes advantage of it, Haberman v. Greenspan, thus, a person who participates in a fraud, with only constructive knowledge, may be liable for compensatory damages. Brown v. Cahill 157 So. 2d 871 (Fla. Dist. Ct. App. 1983). One who, with knowledge of the facts, assists another in the perpetration of a fraud is equally culpable 250 A.D. 1, 293 N.Y.S. 336. It is not necessary for a single person to perform all the acts constituting fraud, where two persons (E. Lipko, Christie) participate in a fraudulent scheme, Stine v. Sanders 987 S.W. 2d 289(1999).

18. Petitioner argues that he may proceed against Cody and Mager Jr. in light of this Court's recent decision in Central Bank of Denver v. First Interstate Bank of Denver, 511 U.S. 164, which abolished aiding and abetting liability under Sec. 10(b) in the securities markets. The 2nd Circuit Appeals Court has not yet addressed this issue, and some district courts chose to impose liability based on conduct short of the actual making of the statement. In re U.S.A. Classic Securities Litigation, 93 Civ. 6667 (JSM), 1995 WL 363841 @ *5 (S.D.N.Y. 6/19/95) the court held that an under-writer's participation in issuance of the prospectus was sufficient to state a claim of primary liability. In the aftermath of Central Bank, numerous lower courts have imposed primary liability on attorneys. Adam v.

Silicon Valley Bancshares, 884 F. Supp. 1398. In Employer Insurance of Wausau v. Musick, Peeler & Garrett, 871 F. Supp. 381 (S.D. Cal. 1994)(attorneys held liable for "drafting and editing the document"). The Central Bank opinion did not however, absolve secondary actors from liability; with respect to professionals the court held: Any person or entity, including a lawyer, who makes a material misstatement (or omission) on which a purchaser relies may be liable as a primary violator.

19. This Court said in Heck v. Humphrey, 512 U.S. 477, "whether money damages premised on an unlawful prosecution could be pursued under Sec. 1983" 512 U.S. @ 480. This Court said the

> common-law cause of action for malicious prosecution provides the closest analogy to claims of the type considered here because, unlike the related cause of action for false arrest or imprisonment, it permits damages for confinement imposed pursuant to legal process. ... A successful malicious prosecution plaintiff may recover, in addition to general damages, 'compensation for any arrest or imprisonment, including damages for discomfort or injury to his health, or loss of time and deprivation of the society."

Id. at 484.

20. In Gallo v. City of Phila., 161 F.3d 217, a 3rd Circuit case finding pre-trial restrictions without incarceration to be a seizure. This Court has said 1983 malicious prosecution claims are permissible and has intimated that the 4th Amendment is a vehicle for pursuing such claims.

21. Since gist of claim for malicious prosecution is abuse of judicial process, plaintiff pursuing such claims under Section 1983 must show that seizure resulted from initiation or pendency of judicial proceeding. Murphy v.

Lynn, 118 F.3d 939 (2nd Cir.). Const. Amend. 4~ Liberty deprivations regulated by 4th Amendment are not limited to physical detention. The fact that Connecticut law provided a remedy does not preclude Lipko Jr. from pursuing Sec. 1983 action against court officers arising from "seizure" that required that he attend court appointments. To state claim for tort of "malicious prosecution" under Connecticut Law, plaintiff must prove initiation or continuation of proceeding against plaintiff, lack of probable cause for commencing proceeding, and actual malice as motivation for defendants' action. Petitioner alleges that malice was implied "by the lack of probable cause in his prosecution." He also says Respondents committed perjury in support of the prosecution. Making false statements to obtain an arrest warrant or prosecution treated as an independent violation of the 4th Amendment. Pierce v. Multnomah Cty. Oregon, 6F.3d1032.

22. As this Court stated in Albright v. Oliver, 510 U.S. 266 "deprivation of liberty that go hand in hand with criminal prosecutions " have "4th Amendment relevance." 510 U.S. @ 274. In Gerstein v. Pugh, "the 4th Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty" 420 U.S. @ 114. This Court made plain that the liberties protected by that Amendment included: pretrial confinement may imperil the suspect's job, ... protects against unreasonable "seizures". It is established that an unreasonable seizure by a state actor in violation of this Amendment, may be pursued in a suit brought under Sec. 1983. This Court has defined seizure: occurs when governmental termination of a person's movement is effected through means intentionally applied. Hill v. California, 401 U.S. 797. You may consider the requirement to appear in court as being a restriction on his liberty. Murphy v. Lynn 118 F.3d @ 945.

23. As Justice Ginsburg observed in Albright, a

defendant is scarcely at liberty, he remains apprehended, arrested in his movements, indeed "seized" for trial, when the state employs the less strong-arm means of a summons in lieu of arrest to secure his presence in court.

24. The 4th Amend. Basis for Lipko's 1983 claims: In order to prevail on such a claim under Sec. 1983. Plaintiff must show a violation of his rights under the 4th Amend. See 510 U.S. @ 274-75, 114 S. Ct. @ 813-14 (plurality opinion); id. @ 281, 114 S. Ct. @ 816-17, Kennedy, J. concurring in the judgment; id. @ 288-89, 114 S. Ct. @ 820-21 (Souter, J. concurring in the judgment). See also Singer v. Fulton Cty. Sheriff, 63 F.3d 110,(2d Cir.) (in order to succeed on a 1983 claim for malicious prosecution; plaintiff must show conduct that was tortuous under state law and that injury was "caused by the deprivation of liberty guaranteed by the 4th Amend."), 116 S. Ct. 1676.

25. Lipko was seized with a summons. Lipko attended court appearances on March 11, 1996 and March 25, 1996, following defendants' filing of summons, and complaint against him. He was forced to appear in court. The question, therefore, is whether the order of the Probate Judge (Joy) to distribute the Estate and the failure of the Respondents to comply with the Order, or the requirement that the Appellant attend court appointments, constituted a "seizure" within the meaning of the 4th Amendment. Lipko attended court appearances on 4/8/96, 8/6/96, 9/11/96, 9/23/96, 11/22/96, 11/25/96 and May 1 and 2, 1997, Trial. plus Briefs to the Appellate , District, 2nd Circuit Appeals Courts and this Court, over 40 court appearances.

26. Probable cause: Respondents argue that Petitioner "fully participated" in the trial that occurred in May of 1997. Here, the events are sharply disputed, the issue of probable cause was properly put to the Respondents in the District and State litigation. At no time in the litigation has

Gonillo and Christie ever admitted that they were ordered to distribute the residue of the Estate on 8/14/95. Petitioner's claim is that Respondents seized Petitioner and forced him to learn to plead Motion to Dismiss, Strike, without probable cause, in violation of Petitioner's 4th Amendment Rights. The Courts chose to believe an attorney, and not look at the evidence, the Probate Court Order. This is where Respondents' argument is flawed. First, the Courts chose to believe one of their own attorneys that practices in their Courts. Secondly, as a matter of law, there was no reason to serve Petitioner with a summons.

27. Respondents argue that the trial court properly issued its judgment after determining that Petitioner was preventing the Estate from closing, because he keeps appealing, and that Respondents are entitled to judgment because Petitioner is stopping the Estate from closing. This argument was properly before the Appeals Court, and was raised in the Superior, Appellate and District Courts, with the Order of the Court Ordering the Distribution. The state trial court made the presumption of probable cause to prosecute because one of their own attorneys (Gonillo) told them it was correct. This presumption is not irrebuttable, see e.g. Marshall v. Sullivan, 105 F.3d 47, 54 (2d Cir. 1996) ("presumption can be overcome by evidence that the trial, and prosecution were the products of fraud, perjury, and suppressing of evidence by Gonillo and Christie, taken in bad faith"). Colon v. City of NewYork, 60 N. Y. 2d 78,468 N.Y.S. 2d 453, 455 N.E. 2d 1248. "On principle, a defendant when sued for malicious prosecution ought not to be allowed to invoke for her protection upon the issue of probable cause, a conviction by the inferior magistrate, when that conviction was procured by fraud, conspiracy, or subornation in its procurement. It is elementary that no defendant (Respondents) can set up in defense their own fraud, or anything procured by their own fraud or profit from their own fraud." Desmon v. Faucett 226 Mass. 100, 115 N.E.

280. Had Respondents addressed these issues of fraud, perjury and suppression of evidence, as Judge Underhill had bid them to do, Petitioner would have been entitled to point to the Order of the Probate Court of 8/14/95.

28. The Rooker-Feldman Doctrine does not apply in Lipko, for the following reasons: The judgment of $206,485.00 was never affirmed by the Connecticut Appellate or Supreme Court. Had the Petitioner appealed the judgment of the Superior Court to the Supreme Court of Connecticut, and the Court ruled on it, then the judgment of the Superior Court would be valid. A judgment is not "immediately enforceable" until the State Supreme Court has ruled on it on appeal. Gresham Park Community Organization v. Howell 652 F. 2d 1227.

29. Here, the question of original jurisdiction turns on whether Petitioner's complaint is a separate suit, and is sufficient to give the 2nd Circuit Appeals Court jurisdiction and 28 U.S.C. Sec. 1343(3) which provides: the district courts shall have original jurisdiction of ... civil action ... any person, ... citizens ... The language of Sec. 1343(3) is similar to that of Sec. 1983, providing a cause of action of deprivations of a constitutional right under color of State law. The two Sections should be construed identically. Exam. Bd. Of Eng. Arch. & Surv. V. Flores de Otero, 426 U.S. 572. Section 1343(3) was enacted "simply to enforce the substantive rights created by 1983," Lynch v. Hshd. Fin., 405 U.S. 538.

30. A petitioner must prove a deprivation of "Right secured by the Constitution" and that the deprivation was under color of State law. The Petitioner has shown that the Respondents violated Petitioner's 4th, 5th and 14th Amendments' Rights, and won a judgment through perjury, fraud, continual misrepresentation through the courts, and locked up Petitioner's property without "due process."

Amendment 14, Rights Guaranteed: A State court makes a ruling arguably infringing on the 14th Amendment's and 4th Amendment's rights and the ruling is based on a State created prohibitory rule, be it common law or statutory, an otherwise private suit loses its private nature and takes on the requisite state action necessary for Civil Rights Act Juris. Gresham Park Com. Org. v. Howell, 652 F. 2d 1227.

31. Action with knowledge of and pursuant to state law is a minimal requirement to satisfy the under color of state law test for Civil Rights Act jurisdiction purposes, where the alleged state action is based on a private party's actions and such party has no authority or pretence of authority to act as state's agent and is not compelled to act for the State. 28 U.S.C.A. Sec. 1343(3); 42 U.S.C.A. Sec. 1983. Gresham Park Com. Org. v. Howell, 652 F. 1227.

32. This Court has consistently held that a private party's joint participation with state officials in the seizure of Petitioner's property is sufficient to characterize that party as a "state actor" for purposes of the 14th Amendment. The rule in these cases is the same as in the context of equal protection deprivation. Adickes v. S.H. Kress & Co. 398 U.S. 144 Supra @ 152. Private persons, jointly engaged with Connecticut officials in the prohibited action are acting "under color" of law for purposes of the statute. To act "under color" of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents. United States v. Price, 383 U.S., @ 794. Respondents, as state actors, in concert with state officers acted jointly with the State, where there was usurpation or corruption of official power in securing the property of the Petitioner.

33. This Court's decision in Societe Internationale Pour Participation's Indus.,Commerciales S.A. v. Rogers, 357 U.S. 197, that mere failure to respond to

discovery is sufficient to justify sanctions, Rule 37(g). E.g., however innocent a failure to provide discovery may be, it is fundamental that a party that does not provide discovery cannot profit from its own failure. Respondents have never provided any discovery requests.

34. This Court, in reaffirming its Societe Internat'l holding in Nat'l Hockey League v. Metropolitan Hockey, Inc., 427 U.S. 639 added a further consideration. Although mindful that a dilatory party might mend its ways even if a dismissal order was reversed on appeal. This Court warned that leniency on the account was not necessarily justified because such leniency would cause "other parties to other lawsuits to feel freer than we think Rule 37 contemplates they should feel to flout other discovery orders of other District Courts." Id. @ 643, 96 S. Ct. @ 2781.

35. On 5/16/02, Petitioner filed Motion for Sanctions; in that document labeled "Defendants' Motion to Dismiss and Defendants' Memorandum in Support of Motion to Dismiss", Gonillo refused to admit that "the Probate Judge Ordered her and her clients to distribute the residue of the Estate to the beneficiaries on 8/14/95," of which this Petitioner is a beneficiary. Respondents have refused to admit that they were ordered to distribute the residue of the Estate on 8/14/95.

36. This Court has dealt over again with the question of what constitutes "the right to be heard" (Schroeder v. New York, 371 U.S. 208) within the meaning of procedural due process. Mullane v. Cent. Hanover Co. 339 U.S. 306. In the latter case, this Court said that the right to be heard "has little reality or worth unless one is informed that the matter is pending and can choose for himself ... to appear, default, acquiesce, or contest." 339 U.S., @ 314.

37. The Connecticut Replevin Statute is identical

to the Florida and Pennsylvania Replevin Statutes, which were found unconstitutional in Fuentes v. Shevin, 407 U.S. 67. In this case, on 4/15/02, supposedly a judge, Moran J. of the State Court, foreclosed the Milford property; and Petitioner never got any notice from a judge or the court on a hearing on foreclosure on 4/15/02. Also, the State Court has no jurisdiction, personal or subject matter over the Petitioner.

38. The right to a prior hearing has long been recognized by this Court under the 5th and 14th Amendments. This Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes effect. E.g., Londoner v. City & County of Denver, 210 U.S. 373. The 14th Amendment makes no special requirement around 3- or 50-day deprivations of property. Any significant taking of property by the State is within the purview of the Due Process Clause. While length and severity of a deprivation may be a factor in determining the appropriate form of hearing, it is not decisive of the basic right to a prior hearing. In Lipko, when Court Officers seized the properties of the Petitioner's possession and then agree to return it if he surrenders another, they deprive him of property whether or not he has the funds, the knowledge, and the time needed to take advantage of the recovery provision.

39. Since Gonillo's lawyer's duties of sending motions and other appropriate material to Petitioner was nothing more than harassment, intended to intimidate and annoy, her letter to Petitioner on 4/12/02 is pure harassment. Letter states that she is going to State Court to foreclose on Milford property. However, Petitioner is under the jurisdiction of Federal Courts; and State Courts have no personal or subject matter jurisdiction. The evidence which Petitioner summarized shows directly that Gonillo knew where she was going with her foreclosure—alleged fraud, Gabriel Capital, L.P. v. NatWest Finance, Inc., 94 F. Supp.

2d 491 (S.D.N.Y. 2000), because she would not admit that she was ordered to distribute the Estate. When it came time to speak, she was silent. Active Concealment of alleged fraud. 37 Am Jur 2d Sec. 301.

40. It is true that Petitioner had not merely to show that the statements were false and perjury by Gonillo and Christie, "But is it your claim that because of Mr. Lipko's litigation you were forced to keep this estate open and forced to file further tax returns," but to present evidence from which a judge could be convinced beyond reasonable doubt of Gonillo and Christie's culpable state of mind. But, as Judge Hough said for the 2nd Circuit Court years ago, "when that state of mind is a knowledge of false statements, while there is no allowable inference of knowledge from the mere fact of falsity, there are many cases wherefrom the actors' (Gonillo's) special situation and continuity of conduct (Gonillo's) an inference that she did know the untruth of what she said or wrote." Bentel v. U.S. 13 F.2d 327 (2d Cir.). "The first count sets forth a claim for a permanent injunction seeking to prevent Mr. Lipko from filing any further litigation that would delay the closing of the Estate of Andrew Lipko Sr." Any lawyer must know his obligations in going to an ex parte hearing for Connecticut Prejudgment Replevin Statutes (52-515) C.S.S. that have been held unconstitutional for over 30 years by this Court in Fuentes v. Shevin 407 U.S. 67; or in Gonillo's case, she made up the order and had it typed, and signed it herself. Even if there was an order, Petitioner is not under personal or subject matter jurisdictions of State Courts. In any case, Petitioner never received a Notice of Hearing to seize his property, as required by the 14th Amendment. Christie, E. Lipko and Gonillo took possession of Petitioner's property, as a property that they already owned, in violation of the 14th Amendment. Gonillo transferred the property on 8/14/02 to Alliance Properties under a warranty deed. These acts constituted a basis for holding Gonillo to the falsity of

her actions in locking up Petitioner's property in Milford, as well as for discrediting her concealment by keeping silent on the order of probate judge. Effect of fraud in registration of land title—Certificate of title procured through fraud are null and void. Fraud sufficient to reopen the status of a registered title in the hands of the original registrant include constructive fraud, (as Petitioner has shown here) such as a registration secured upon statements contrary to fact, (Gonillo's order of State Court), which were susceptible of accurate knowledge, and which were recklessly made by registrant (Gonillo). Whittenberger v. Commercial Credit Corp. 37 Mass. App. C. 303, 639 N.E. 2d 737 (1994).

41. The Petitioner can meet his burden by proving that Gonillo deliberately closed her eyes to facts that she had a duty to see. S.E.C. v. Frank 388 F.2d 486 (1968). E.g. "The first count seeks permanent and temporary relief enjoining the defendant, Andrew Lipko Jr. from continuing in his abusive pro se dalliances in the probate court, superior court and appellate courts, which have effectively prevented plaintiff from closing the Estate of Andrew Lipko Sr." Respondents' Complaint and Application for Permanent or Temporary Injunction. Gonillo recklessly stated as facts that a State Judge ordered the foreclosure of Petitioner's property. Motion for Strict Foreclosure is not signed by any judge. Even if Gonillo went to the State Court, and a judge ordered the foreclosure, it would be invalid, because the State has no personal or subject matter jurisdiction to order foreclosure of Petitioner's property. Petitioner is under the jurisdiction of the Federal Courts. Reckless statement of fact of which relator is ignorant may be equivalent civilly to statement of that which he knows to be false. Bentel v. U.S. 13 F.2d 327 (2nd Cir.).

42. "Willful," this Court has told us, "is a word of many meanings, its construction often being influenced by its context." Spies v. United States 317 U.S. 492. The

willfulness requirement to be satisfied in fraud cases by proof of representations which due diligence would have shown to be untrue. Stone v. U.S. 113 F.2d 70.

43. "In our complex society, the accountant's certificate and the lawyer's opinion can be instruments for inflicting pecuniary loss more potent than the chisel or the crowbar." S.E.C. v. Frank 388 F.2d 486 (1968). "Finally, Ms. Christie authorized the firm to file an application for temporary and permanent injunction and complaint for vexatious litigation against Mr. Lipko." A lawyer (Gonillo) has no privilege to assist in circulating a statement which she knows to be false simply because her client has furnished it for her. S.E.C. v. Frank. Gonillo kept silent on the order of the Probate Judge on 8/14/95 to distribute the Estate. A lawyer no more than others, can escape liability for fraud by closing her eyes to what she saw and could readily understand. S.E.C. v. Frank 388 F.2d 486 (1968 2nd. Cir.).

44. Further, Gonillo hired Joseph J. Mager, and he appointed himself to sell Petitioner's property, without any court order, (even if there was a court order, Petitioner never got a court order, and Gonillo never produced a court order. Nor did the Superior Court send Petitioner any copy of such hearing or court order, which is required by the 14th Amendment, and hired State Marshall S. Levine and Locksmith of Bud's Locksmith Service to gain access by breaking the lock (trespassing without authority); and later, on 8/14/02 resecuring the premises with all their own locks. The under-color-of State-law requirement of 28 U.S.C.S. Sec. 1343(a)(3) and 42 U.S.C.S. Sec. 1983 is the same as the State action requirement of the 14th Amendment, at least to the extent that all conduct satisfying the State action requirement also satisfies the statutory requirement. State Marshall S. Levine was acting as a private security guard, therefore his actions are "under color of state law" actionable under Civil Rights Act 42 U.S.C. Sec. 1983. Actions of off-

duty policeman acting as private security guard as actions "under color of state law" actionable under 56 ALR Fed 895.

45. Petitioner received no notice of a hearing from the State Court prior to being deprived of his home by Gonillo, E. Lipko, M. Christie, Joseph Mager, State Marshall S. Levine and the agent of Bud's Locksmith Service.

46. Gonillo acted under pretense of law for her own personal revenge and satisfaction. She should have distributed the Estate when ordered by the Probate Judge. She had an ulterior motive, not with purpose of distributing the Estate, but to inflict as much misery on Petitioner and family as possible.

CONCLUSION:

1. Early in litigation, Petitioner filed grievances against attorneys Christine M. Gonillo, Elias A. Alexiades and Attorney Henry Maritz, who was ultimately removed from handling the Estate by the Probate Judge (B. Joy). Grievance complaints were filed against Gonillo on 11/23/93, 12/29/94 and 11/24/96 in the State Grievance Committee; and in the Federal Grievance Committee on 12/9/98, 10/16/98, 12/12/00, 4/26/02 and 2/9/01, #300 GP25AWT. During the handling of this Estate, Petitioner tried to get Respondents removed for malfeasance, by verbally attacking them with his appeal to remove the both of them. Respondents responded with spitefulness, using the Estate as a scapegoat, by refusing to distribute the residue of the Estate according to the written order of the Probate Judge on 8/14/95. Petitioner's continued criticism of Respondents for their refusal to distribute the residue of the Estate created resentment, and a desire for revenge against the Petitioner, so that the Respondents and others thereafter deliberately, intentionally and maliciously conceived a plan to force Petitioner into a compromising act or position, in order to

give the false appearance that Petitioner "was responsible for the Estate not being able to close because he keeps appealing." Beauregard v. Wingard, 230 F. Supp. 167.

2. This desire for revenge and resentment forced Respondents to have Sheriff W. Stuart serve a Summons on Petitioner on 2/29/96. Judge Curran refused to allow Petitioner to enter evidence to defend himself. Petitioner appealed to this Court, which had jurisdiction from 4/6/00 to 1/22/01. Petitioner sent proof of service to Gonillo on 5/26/00. Respondents, out of spite, responded by filing a Motion for a hearing in damages, on 5/26/00, and a judgment lien of approximately $79,000.00 was entered on the First Property in 2/01, and covered the full amount. The Fraudulent Judgment Liens on the Second Property were entered 8/28/01. The State Judgment Liens on both properties, obtained by perjury, conspiracy, alleged Extrinsic Fraud and suppression of evidence will be vacated by a Federal Court. Marshall v. Holmes, 141 U.S. 589. Out of spite, Respondents had State Marshall W. Stuart serve a new revised second State Complaint and Summons on 9/4/01. Further, the Summons and Complaint filed by Respondents on 8/28/01, which Petitioner alleges are fraudulent and collusive actions, were intended solely to coerce Petitioner to pay Respondents monies supposedly owed as a result of Respondents' fraudulent scheme. The attorney who brought this action on behalf of Christie is Gonillo.

3. On 6/15/02, Milford Police Officers seized Petitioner and family at their home at 11:30 P.M. The purpose of calling the Police was to bring Petitioner into disgrace in his Milford Community as a punishment for his criticism aforesaid, the filing of a Police Report, and "posting of a stigma or badge of disgrace, or becoming dangerous to the peace" of the Milford Community. Wisconsin v. Constantineau 400 U.S. 433. The purpose of obtaining this information was to turn it over to Gonillo,

which is profiling. This Court unanimously ruled that the 1994 Driver's Privacy Protection Act prohibiting profiling is constitutional. Petitioner was deprived of his property in Milford under color of state law statute 52-325, when State Marshall S. Levine secured the property on 6/15/02, without any court order and supervised a selling of the Milford property at public auction. Then, under color of State Law, State Marshall S. Levine resecured the property on 8/14/02, without any authorization, and at this time, put different locks on the gate, changed all the locks to the home, which caused imprisonment of two family cars on the property.

4. The 2nd Cir. Appeals Court, Altimari, Circuit Judge states: "We agree with plaintiff that relief from a judgment by way of an independent action need not be premised on a showing of extrinsic as opposed to intrinsic fraud." See Gleason v. Jandrucko 860 F.2d 556 (2nd Cir. 1988), Discussion [3,4]; see also Averbach v. Rival Mfg. Co., 809 F.2d 1016, (3d Cir.)("'extrinsic'—'intrinsic' distinction which is based on a statement in United States v. Throckmorton, 98 U.S. (8 Otto) 61, was overruled, if it was ever the law, by Marshall v. Holmes, 141 U.S. 589"). Wright & A. Miller, Federal Practice and Procedure Sec. 2868, at 240-41 (1973)(distinction between extrinsic and intrinsic fraud is "most unfortunate, if true. [It] rests on clouded and confused authorities, its soundness as a matter of policy is very doubtful, and it is extremely difficult to apply. It ought not to persist as a limit on independent actions" under Fed.R.Civ.P. 60(b),) ...".

5. The Respondents have engaged in a "pattern of ignoring discovery requests" so as to "willfully and unnecessarily" prolong the litigation.

6. The entire course of these pleadings since 8/14/95 was unwarranted, and should never have taken place, had Gonillo and Christie distributed the residue of the

Estate according to the written order of the Probate Judge on 8/14/95. However, because Gonillo and Christie commenced and persisted in the prosecution of Appellant and brought others, E. Lipko, the Police, Cody, Mager & Mager, the Court should award: Damages; and any sanction must be limited to what is sufficient to deter repetition of the violation or comparable conduct by others similarly situated. FR Civ. P. Rule 11(0)(2). Plus triple damages, a measure allowed by state law where malice is found in Malicious Prosecution. This is a class based Animus of Lawyers of which Cody, Gonillo and Mager Jr. are part. Each law firm, Cody & Gonillo, Mager & Mager, should shoulder a share of the damages, and the parties, Christie and E. Lipko(if the Court grants her to be made a party to the caption), would pay a share of the damages. Further, it is the policy in Connecticut Courts to require litigants to have an attorney. All these facts, corrupt sheriffs, no effective grievance against lawyers, and courts that limit observance of the law to only "hearing", leave Connecticut last of 50 Districts of the United States.

7. Petitioner respectfully asks that this Court review the decision making of the 2nd Circuit Court in this Case, and in Petitioner's request for relief in the following: This Court should review this case to resolve a conflict among the circuits and to clarify the aiding and abetting of fraud as it pertains to lawyers.

Respectfully submitted,

A. Lipko Jr.

App. 1
APPENDIX

UNITED STATES COURT OF APPEAL
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 6th day of April, two thousand and four.

PRESENT: JOSE A. CABRANES
ROSEMARY S. POOLER
Circuit Judges
JANET C.HALL - District Judge*

Lipko, Jr. - Plaintiff-Appellant,
v. No. 02-9099
Margaret Christie - Defendant-Appellee

APPEARING FOR APPELLANT:
A. LIPKO, JR., New Haven, CT, pro se.

APPEARING FOR APPELLEES:
CHRISTINE M. GONILLO, Milford, CT.

- The Honorable Janet C. Hall, of the United States District Court for the District of Connecticut, sitting by designation.

Appeal from a judgment of the United States District Court for the District of Connecticut (Stefan R. Underhill, Judge) entered August 13, 2002 dismissing plaintiff's complaint for lack of subject matter jurisdiction under the Rooker-Feldman doctrine.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court be and it hereby is AFFIRMED.

Plaintiff has conducted ten years of litigation challenging the 1993 probate of his father's estate, of which defendant, plaintiff's sister, was executrix. Plaintiff's litigation has included three probate appeals in the Superior Court of the State of Connecticut, five appeals to the State of Connecticut Appellate Court, and two petitions for certiorari to the Supreme Court of the State of Connecticut. In the federal courts, plaintiff has filed three matters in the United States District Court for the District of Connecticut, and this is his fourth appeal to this Court. He has also filed two petitions for certiorari to the United States Supreme Court. See generally Appellee's Br. Att. 3.

Plaintiff's history of litigation against defendant eventually incited defendant to file suit against plaintiff in Connecticut state court, which yielded (1) a permanent injunction prohibiting plaintiff from filing further litigation delaying resolution of the probate of his father's estate, and (2) a damages judgment for vexatious litigation. See *Christie v. Lipko*, No. CV96 0053297S (Conn. Super. Ct. Aug. 17, 1997).

Lipko appealed the injunction portion of the judgment in state and federal courts. His federal complaint, filed while his state appeal was still pending, was dismissed

by the United States District Court for the District of Connecticut for lack of subject matter jurisdiction under the *Rooker-Feldman* Doctrine, and this Court affirmed the District Court's judgment on appeal. See *Lipko v. Christie*, No. 99-6263, 2000 WL 357671 2d Cir. Apr. 6, 2000) (unpublished). His state appeal was equally unavailing. See Defendant's Memo. In Support of Motion to Dismiss, *Lipko v. Christie*, No. 3:02 CV 479 (SRU), at 3 (D.Conn. Apr. 23, 2002).

Later, Christie obtained judgment liens against two pieces of real property to secure the damages judgment against Lipko. See Compl. at 3. Lipko's attempts in state court to challenge the damages judgment led to the imposition of monetary sanctions against him in the amount of $1,485, for filing a frivolous appeal. See Defendant's Memo. in Support of Motion to Dismiss, *Lipko*, No. 3:02 CV 479 (SRU), at 6.

On March 19, 2002, plaintiff filed the federal complaint at issue in the instant appeal, which sought to vacate the judgment liens on his property and to enjoin defendant from taking any action to enforce the state court damages judgment. The District Court first denied plaintiff a temporary restraining order preventing the imminent foreclosure of his home pursuant to one of the judgment liens, because plaintiff "ha[d] failed to demonstrate a likelihood of success on the merits or sufficiently serious questions going to the merits." *Lipko v. Christie*, No. 3:02 CV 479 (SRU), at 2 (D. Conn. May 9, 2002). Specifically, the Court held that plaintiff's "claims [we]re, in all likelihood, barred by the *Rooker-Feldman* doctrine." Id.

In its order denying plaintiff a temporary restraining order, the District Court deferred dismissal of plaintiff's complaint for lack of subject matter jurisdiction under App. App. 4

Rooker-Feldman in order to afford plaintiff the opportunity to make his case against such a dismissal. See id. at 4. After plaintiff submitted his opposition to defendant's motion to dismiss under *Rooker-Feldman*, the District Court dismissed the appeal for lack of subject matter jurisdiction under that doctrine. See Lipko v. Christie, No. 3:02 CV 479 (SRU), at 2 (D. Conn. Aug. 9, 2002). We now affirm.

The *Rooker-Feldman* doctrine precludes lower federal courts from exercising jurisdiction over claims that seek to reverse or modify a state court judgment. See Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923); see also District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 n.16 (1983) (noting that lower federal courts lack jurisdiction over not only direct appeals of state court judgments, but also claims that are "inextricably intertwined" with the determinations of a state court). As the District Court correctly concluded, this complaint, like plaintiff's earlier complaint challenging the injunction imposed against him in state court, which was dismissed under *Rooker-Feldman*, see *Lipko*, 200 WL 357671, is merely a "collateral attack on [a] state court judgment," Lipko, No. 3:02 CV 479 (SRU), at (D. Conn. Aug. 9, 2002). It is therefore outside the jurisdiction of the District Court.[1]

In view of plaintiff's history of vexatious litigation, and the fact that he has not been deterred from further filings in the District Court and this court by our earlier judgments declaring our lack of jurisdiction to review state court decisions, at oral argument of this matter we ordered plaintiff to show cause by letter to the Court why he should not be prohibited from pursuing any further appeals before this Court without first obtaining leave of the Court. See, e.g., In re *Martin-Trigona*, 737 F.2d 1254, 1264 (2d Cir. 1984); In re

[1] Because we lack subject matter jurisdiction over plaintiff's complaint, we decline to reach the myriad motions plaintiff has filed in our Court.

Bill Saunders, No. 02-3097 (2d Cir. Mar. 20, 2003); *Tsimbidaros v. Goettel*, No 96-6169 (2d Cir. Nov. 12, 1998). Because plaintiff has failed to show cause why he should not be subject to such an order, and because exiting injunctions and sanctions in state have not deterred him from initiating frivolous complaints and appeals in the federal courts, we now impose a leave-to-file requirement in the Court of Appeals for the Second Circuit.

It is hereby ORDERED that the Clerk refuse to accept any further submission signed by the plaintiff unless he first obtains the leave of the Court to file such papers. See, e.g. *In re Martin-Trigona*, 737 F.2d at 1264; *In re Bill Saunders*, No. 02-3097 (2d Cir. Mar. 20, 2003); *Tsimbidaros*, No. 96-6169 (2d Cir. Nov. 12, 1998); see also *In re Martin-Trigona*, 9 F.3d 226 (2d Cir. 1993)(upholding the Court's power to impose "leave-to-file" requirements).

For substantially the reasons stated by Judge Underhill in his orders of May 9, 2002 and August 9, 2002, the judgment of the District Court is AFFIRMED.

It is so ORDERED.

FOR THE COURT,
Roseann B. MacKechnie, Clerk of Court

By: s: Lucille Carr

CONSTITUTIONAL PROVISIONS INVOLVED

1. Amendment 4: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath, or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

2. Amendment 5: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when an actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation".

3. Amendment 14: All persons born or naturalized in the U.S., and subject to the jurisdiction thereof, are citizens of the U.S. and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the U.S.; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 42, United States Code, Section 1983: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory or the District of Columbia, subjects, or causes to be subjected, any

citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia.

App. 8

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

A. LIPKO JR.	:	
V.	:	Civ. Action No. 3:02
	:	CV 479 (SRU) :
M. CHRISTIE		

ORDER

A. Lipko Jr. ("Lipko"), acting pro se, previously moved for entry of a temporary restraining order to prevent the foreclosure of his home to satisfy a state court judgment. The court denied that motion holding that, in all likelihood, the court lacked subject matter jurisdiction over Lipko's claims under the holdings in Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16(1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 1983)(the "Rooker-Feldman doctrine"). The court declined at that time to dismiss the complaint, notwithstanding that the defendants had filed a motion to dismiss for lack of subject matter jurisdiction and that the court has an obligation to determine the existence of subject matter jurisdiction, because Lipko had not yet had the opportunity to address the issue. The court therefore ordered Lipko to respond to defendants' motion to dismiss and to specifically address that issue of whether jurisdiction was foreclosed under the Rooker-Feldman doctrine.

Lipko has filed a "Motion in Objection to Motion to Dismiss," Memorandum of Law in Support of Motion to a Dismiss," and an "Amendment to Motion in Objection to Motion to Dismiss." The court has construed Lipko's opposition papers liberally and as raising the strongest possible arguments they suggest. Nonetheless the court concludes that dismissal is appropriate.

In his opposition papers, Lipko first argues that his claims are claims for deprivation of civil rights under 42 U.S.C. Section 1983 and that the court, therefore, has subject matter jurisdiction under 28 U.S.C. Secs. 1343(a)(3) & (4) and 1331. Lipko is certainly correct that, as a general matter, the federal courts have jurisdiction to hear section 1983 claims. The Rooker-Feldman doctrine, however, teaches that where a plaintiff's claims, even if couched in terms of section 1983, in essence seek review of a state court judgment, the district courts are without subject matter jurisdiction. In short, under the Rooker-Feldman doctrine, the court cannot entertain Lipko's collateral attack on the state court judgment even though it is "cloak[ed] ... as a [section] 1983 action." Davidson v. Garry, 956 F. Supp. 265, 269 (E.D.N.Y. 1996), aff'd, 112 F.3d 503 (2d Cir. 1997).

Lipko next reads certain Supreme Court and Fifth Circuit precedent as limiting the applicability of the Rooker-Feldman doctrine to cases where a plaintiff requests the District Court declare a state court judgment invalid, as opposed to simply seeking an injunction enjoining enforcement of the state court judgment. In simply enjoining enforcement of a state court judgment, Lipko concludes, the District courts would not be engaging in impermissible appellate review. Thus, he urges the court to liberally construe his complaint as seeking only an injunction against enforcement of the state court judgment.

As a preliminary matter, the court disagrees with Lipko's proposed interpretation of Rooker-Feldman and the case law upon which he relies. Furthermore, Lipko's argument ignores the fact that, as in this case, in deciding whether a plaintiff has succeeded on the merits of his claim and is therefore entitled to an injunction against enforcement

of the state court judgment, a District Court may be called upon to pass on the merits of the state court judgment. Finally, were, as here, the injury alleged by the plaintiff results from the state court judgment, Rooker-Feldman bars jurisdiction.

Lipko also argues that because the state court judgment he seeks to have reviewed was not decided by the Connecticut Supreme Court, Rooker-Feldman does not apply. Similarly, Lipko argues that the court incorrectly seeks to require him to exhaust administrative remedies. Lipko misreads both this court's prior ruling and applicable law. Lipko must seek review of his claims through the Connecticut state court system all the way to the highest court competent to hear his claims. Then he may seek review with the United States Supreme Court. The Rooker-Feldman doctrine holds simply that if an appeal or attack on a state court judgment is cognizable in federal court, jurisdiction lies with the United States Supreme Court, not the District Courts.

For the foregoing reasons, and for the reasons stated in the court's ruling on Lipko's motion for entry of a temporary restraining order, the defendants' motion to dismiss **[doc # 6]** is granted. The complaint is dismissed for lack of subject matter jurisdiction. The clerk is instructed to close the file.[1]

It is so ordered.
Dated at Bridgeport this 9th day of August 2002.
s: Stefan R. Underhill, United States District Judge

[1] The court is aware that Lipko has several pending motions. Because the court lacks subject matter jurisdiction over the complaint, the court can not and will not reach those motions prior to dismissal.